

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DELORES GARRETT

Plaintiff,

10-CV-6565T

v.

**DECISION
and ORDER**

MELISSA BROWN, M.D.,
WESTSIDE HEALTH SERVICES, INC.,
STRONG MEMORIAL HOSPITAL, and
UNIVERSITY OF ROCHESTER

Defendants.

Plaintiff, Delores Garrett ("Plaintiff"), now deceased, commenced this action on May 27, 2010, in New York State Supreme Court, Monroe County, for personal injury resulting from alleged medical malpractice by Melissa Brown ("Brown"), a former physician at Westside Health Services ("Westside"), and Strong Memorial Hospital. The United States sought to remove this action to Federal Court, pursuant to 28 U.S.C. § 2679 and 42 U.S.C. § 233 following certification by the Attorney General that Brown and Westside were deemed to be employees of the Public Health Service by the Department of Health and Human Services on January 1, 2007. (Docket No. 1). Accordingly, on October 4, 2010, this action was removed to this Court. The United States now moves to substitute itself for defendants Brown and Westside pursuant to 28 U.S.C. § 2679(b)(1). The Government also seeks to dismiss this action against the United States as plaintiff has failed to exhaust her administrative

remedies. The Government's motion is granted.

By letter dated October 29, 2010, Plaintiff's former attorney, Peter Rodgers, notified the court that following Plaintiff's death on June 20, 2010, he met with Plaintiff's family and they informed him they did not intend to have him appear on Plaintiff's behalf to pursue a wrongful death action based on Plaintiff's personal injury claim. Therefore, this Court hereby dismisses Plaintiff's complaint in its entirety with prejudice.

ALL OF THE ABOVE IS SO ORDERED.

s/Michael A. Telesca
MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
November 23, 2010